THE HONOURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION NO. 17715 of 2007

30-07-2007

Between:

Sattenapalli Municipal Vegetable Market
Merchants Union, Sattenpalli, rep. by its
President.

… Petitioner

And:

Sattenapalli Municipality, rep. by its
Commissioner, Sattenapalli and another

… Respondent

THE HONOURABLE SRI JUSTICE GODA RAGHURAM

Writ Petition No. 17715 of 2007

ORAL ORDER :

The petitioner is a Union representing the interests of the members of the Sattenapalli Municipal Vegetable Market. They are aggrieved by the proceedings dated 14.8.2007 whereby the representation of the petitioners have not been considered and the 1st respondent resolved to evict the vendors and proceed with construction of additional shop rooms. The members of the petitioner-union were asked to vacate the premises currently occupied by them in the existing market, within the stipulated time.

There is an existing public market in the 1st respondent Municipality in Sy.No.187. It was in existence for quite some time. Pursuant to a resolution of the municipality dated 31.7.2007 the

location of the public market is to be shifted to another place within the municipality.

Earlier the petitioner filed W.P. No. 765 of 2007. By an order dated 17.4.2007 the writ petition was disposed of permitting the petitioner to make a representation to the respondents which was directed to be disposed of by the respondents. Pursuant to the order of this court *supra*. the petitioner submitted a representation dated 20.4.2007, whereat it was pleaded that the existing market is situated in the center of the town, convenient to the public and to the members of the petitioner-Association and therefore the relocation be not done.

It would appear that in respect shops at the new location public auctions were held on 18.3.2006, 23.3.2006, and 13.4.2006 for grant of lease/licence of the 42 shops already constructed. These auctions were limited to the merchants in occupation of the shops in the existing location. None of the members of the petitioner-Association participated in the auction. Therefore auction was rescheduled on 15.4.2007 for the public to participate thereat. There was a public participation at such auction and leases were also granted to the successful bidders. In all 63 shops are proposed in the new location of which 44 have already been completed and have been leased out. The other 19 are under various stages of construction.

The petitioner assails the relocation of the public market on the ground that no prior sanction of the State Government has been obtained by the 1st respondent for the change of location as mandated by Sec. 277(3) of the A.P Municipalities Act 1956 ('the Act').

Sec. 277 sets out the power conferred on the council of a municipality in relation to public markets. Sub-sec (1) enjoins that the council may provide site for use as public markets. Sub-sec (3) enacts that the council may, with the sanction of the Government, close any public market or part thereof. Sub-sections (2) and (4) are also relevant way. These provisions enable the Government to levy certain specified fee in respect of any public market and to lease any land,

shop, godown, building or terrace of a building owned by it and within its jurisdiction for a stipulated period subject to specified terms and conditions as the council may deem fit. Except sub-sec (3) of Sec.277 of the Act, the other provisions confer an unconditional power on the council of a municipality to administer its property including by providing a place for use as public market. It is only by sub-sec (3) that the council is required to obtain the sanction of the State Government and that too for closing any public market or a part thereof.

The learned counsel for the petitioner would urge that the relocation of an existing market amounts to closing the public market at place 'A' and providing a place at 'B' as public market and therefore the sanction of the State Government is a *sini qua non*.

The above contention does not commend acceptance by this court. On a true, fair and holistic construction of the provisions of Sec. 277 of the Act, the legislative signal is compelling that a plenitude of power and discretion is conferred on the municipal council to identify places for use as public markets. Integral to such power is the power to relocate or identify another place for location of a public market. The legislative philosophy underlying the prescription under sub-sec (3) of Sec. 377 of the Act (regarding obtaining the sanction of the State Government for closing any public market or part thereof) appears to be that since a current expectation is generated in the minds of the public or users of an existing public market and that expectation or facility is impacted wholly or *protanto* by the closure of a public market, the oversight of the State Government is felt necessary as eventually in the considered view of the Legislature the State Government has a democratic accountability. Sub-sec (3) enacts a restriction on the plenitude of the generic power of the municipal council qua the presents under Sec.277. Having regard to the legislative endowment of powers and functions to the Council apparent from Sec.277, in the considered view of this court the provisions of sub-sec (3) must receive a strict construction. So construed it is only with respect to the closure of any public market wholly or in part that the sanction of the State

Government is mandated.

The relocation of a public market, in the absence of any allegation that the new market is of a lesser area than the existing one, does not tantamount to closure of a public market or part thereof within the meaning of Sec. 277(3) of the Act. If the construction on behalf of the petitioner is accepted, then the sanction of the State Government would become mandatory even for the exercise of power by the Municipal Council to provide a place for use as public market. This is not the intendment of Sec.277 of the Act.

On textual interpretation as well as purposive construction of the provisions of Sec. 277 of the Act it does not appear to this court that relocation of an existing market by the Municipal Council is an incomplete exercise of power without the sanction of the State Government.

In the considered view of this court the provisions of Sec. 277(3) of the Act have no application to the case on hand. There are no merits in the writ petition. The writ petition is accordingly dismissed. No order as to costs.

Dated: 30.08.2007 ----------

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Pvsn Justice G. Raghuram